

ELBRIDGE W. SMITH [HI #2079]

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Claims Administrator

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GREGORY TAPAOAN; MICHAEL	)	CIVIL NO. 01-00815 DAE LEK
MARS; PEDRO RIBERIO; JOHN L.	)	(Class Action; Injunctions)
LEVAN; FLOYD SANTOS; FLOYD	)	
SYLVESTER; LEO TOILOLO;	)	Claims Administrator's <i>Ex-Parte</i>
JOSE BACDAD; and GEORGE	)	Motion To File Exhibit Under Seal;
RABAGO,	)	Memorandum in Support of <i>Ex-Parte</i>
	)	Motion; Declaration of Elbridge W.
Plaintiffs,	)	Smith; Exhibit "A"; Proposed Order
vs.	)	Granting <i>Ex-Parte</i> Motion to File
	)	Exhibit Under Seal; Certificate of
BENJAMIN CAYETANO, et al.,	)	Service
	)	
	)	[NON-HEARING MOTION]
	)	
	)	Magistrate Judge Leslie E. Kobayashi
Defendants.	)	
	)	

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Claims Administrator's *Ex-Parte* Motion to File Exhibit Under Seal

COMES NOW, Claims Administrator Elbridge W. Smith, and hereby moves *ex-parte* for an Order to allow the Claims Administrator to file under seal an Exhibit to the Claims Administrator's Settlement Fund Proposed Plan of Allocation and

Report to protect the privacy and confidentiality of the claimants' identities in accordance with Class Action Claim Form (Exhibit "A"), which provides "that the information given here is private, and will be held in strictest confidence."

This *ex-parte* motion is brought pursuant to the Federal Rules of Civil Procedure, Rule 7, and is based on the Claims Administrator's Memorandum in Support of *Ex-parte* Motion, the Declaration of Elbridge W. Smith and Exhibit "A" attached hereto.

DATED: Honolulu, Hawaii, December 15, 2006.

  
\_\_\_\_\_  
ELBRIDGE W. SMITH  
Claims Administrator

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GREGORY TAPAOAN; MICHAEL	)	CIVIL NO. 01-00815 DAE LEK
MARS; PEDRO RIBERIO; JOHN L.	)	(Class Action; Injunctions)
LEVAN; FLOYD SANTOS; FLOYD	)	
SYLVESTER; LEO TOILOLO;	)	Claims Administrator's Memorandum
JOSE BACDAD; and GEORGE	)	in Support of <i>Ex-Parte</i> Motion
RABAGO,	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	
BENJAMIN CAYETANO, et al.,	)	
	)	
	)	
Defendants.	)	
_____	)	

Claims Administrator's  
Memorandum in Support of *Ex-Parte* Motion

Claims Administrator Elbridge W. Smith, has moved *ex-parte* for an Order to allow him to file under seal the unredacted version of his Adjudication Report Exhibit to his Claims Administrator's Settlement Fund Proposed Plan of Allocation and Report to protect the privacy and confidentiality of the claimants' identities, and other personal information, in accordance with the Class Action Claim Form (Exhibit "A"), which provides "that the information given here is private, and will be held in strictest confidence."

The Claims Administrator, pursuant to his duties and responsibilities to locate

potential claimants, sent potential claimants an approved Notice of the Tapaoan v. Cayetano Settlement and a Class Action Claim Form. Claimants then returned the completed Class Action Claim Form to the Claims Administrator for evaluation and possible participation in the Settlement Fund. The Class Action Claim Form provides near the bottom of the reverse side that "The information given here is private, and will be held in strictest confidence." (See Exhibit "A").


The Claims Administrator is to be presently filing the Claims Administrator's Proposed Plan of Allocation and Report (hereinafter "Plan Report"). The Plan Report will contain two versions of the Adjudication Report. The first is to be a Redacted copy of that Adjudication Report from which the claimants' names shall be hidden from public view in order to protect their privacy. Visible will be the claimant number, the number of Over Detention ["OD"] days awarded, whether compensation for an illegal Search was awarded, the total Amount of monetary compensation awarded and any relevant Comments. The second version of the Adjudication Report is a complete unredacted report, also containing each of the claimants' names in addition to all the same information as contained in the Redacted copy of that Report.

In accordance with the Class Action Claim Form, providing that the claimants' information will be kept private and held in strictest confidence (Exhibit "A" hereto), the Claims Administrator requests *ex-parte* that the second unredacted complete

version of this Adjudication Report containing claimants' names be filed under seal with this Court, so that only the redacted version, deleting the claimants' names, will be accessible to the public.

The above facts, establish good cause for an *ex-parte* order to be issued by this Court so providing.

DATED: Honolulu, Hawaii, December 15, 2006.

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ELBRIDGE W. SMITH  
Claims Administrator

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GREGORY TAPAOAN; MICHAEL MARS; PEDRO RIBERIO; JOHN L. LEVAN; FLOYD SANTOS; FLOYD SYLVESTER; LEO TOILOLO; JOSE BACDAD; and GEORGE RABAGO, ) CIVIL NO. 01-00815 DAE LEK  
) (Class Action; Injunctions)  
)  
) Declaration of Elbridge W. Smith;  
) Exhibit “A”  
)  
Plaintiffs, )  
vs. )  
)  
BENJAMIN CAYETANO, et al., )  
)  
Defendants. )  
)

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## DECLARATION OF ELBRIDGE W. SMITH

I, ELBRIDGE W. SMITH, do hereby declare:

1. I am the Court appointed Claims Administrator for the Claims Fund pursuant to the Class Action Settlement Agreement in the above-referenced action.

2. I make this Declaration of my own personal knowledge and am competent to testify to the declarations stated herein.

3. Pursuant to the duties and responsibilities of the Claims Administrator to locate potential claimants, I caused the approved Notice of the Tapaoan v. Cayetano Settlement and of the Class Action Claim Form to be sent to potential claimants, who returned the completed Class Action Claim Form for evaluation and possible participation in the Settlement Fund. That Class action Claim Form provides near the bottom of the reverse side that “The information given here is private, and will be held in strictest confidence.”

4. A true and correct copy of the Class Action Claim Form is attached hereto as Exhibit “A.”


5. I am to be presently filing the Claims Administrator's Proposed Plan of Allocation and Report (hereinafter "Plan Report"). That Plan Report will contain two versions of my Adjudication Report. The first is to be a redacted copy of that Adjudication Report from which the claimants' names shall be hidden from view in order to protect their personal privacy. Visible will be the claimant number, the number of Over Detention days awarded, whether compensation for an illegal Search was awarded, the total Amount of Monetary Compensation Awarded and any relevant Comments. The second complete copy of the Adjudication Report will also contain each claimant's name in addition to all the same information as contained in the redacted copy of that Report.

6. In accordance with the Class Action Claim Form providing that the claimants' information will be kept private and held in strictest confidence (Exhibit "A" hereto), I as the Claims Administrator request *ex-parte* that the second unredacted copy of this Adjudication Report containing claimant names be filed under seal with this Court, so that only the redacted version, deleting the names of the claimants, will be accessible to the public.

7. The parties identified on the attached Certificate of Service were contacted and given notice of this *Ex-parte* Motion to File under Seal prior to the filing of this *ex-parte* motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: Honolulu, Hawaii, December 15, 2006.

  
\_\_\_\_\_  
Elbridge W. Smith  
Claims Administrator

**EXHIBIT "A"**



Yes, I do qualify and I here make a Claim against the State of Hawaii in the *Tapaoan vs. Cayetano* Settlement Fund:

Check applicable box(es) and fill in blank information:

- ☐ I was over detained. I was detained at \_\_\_\_\_ for approximately \_\_\_\_\_ days  
Facility name # of days  
after I should have been released on \_\_\_\_\_. I was actually released on \_\_\_\_\_.  
date date  
and/or
- ☐ I was subjected to an improper strip search or a visual body cavity search (see definition on other side of this claim form and in the attached Notice of Class Action Settlement). I was improperly searched following (check one):
- ☐ my acquittal on \_\_\_\_\_, or  
date
- ☐ dismissal of charges on \_\_\_\_\_.  
date

By signing this form below, I am confirming that the above information is correct and that:

1. I am the person identified on the reverse side of this form,
2. I am over the age of 18,
3. I agree to abide by, and be limited to, the formula for damages approved by the Court, and
4. I agree to keep the Claims Administrator informed of my current address at all times.

**By submitting this Claim Form, I agree to be bound by the determinations of the Claims Administrator as to the amount of money, if any, to which I am entitled, as may be approved by the U.S. Federal District Court; I waive any right to appeal; and I waive any cause of action against the Claims Administrator for negligence or gross negligence relating to administration and distribution of the Class Fund.**

I declare under penalty of perjury under the laws of the State of Hawai'i that the information given above is true and correct.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

*[For more information see the attached Notice of Class Action and Proposed Settlement and/or the Settlement Agreement referenced therein and on file with this Federal Court]*

The information given here is private, and will be held in strictest confidence. If you have any questions about this lawsuit, write to: Claims Administrator, P.O. Box 3373, Honolulu, Hawaii 96801 or contact him by email at [claims@hawaii.rr.com](mailto:claims@hawaii.rr.com).

THIS CLAIM MUST BE SIGNED AND POSTMARKED NO LATER THAN **November 30, 2005.**

(Turn over and complete other side)

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GREGORY TAPAOAN; MICHAEL	)	CIVIL NO. 01-00815 DAE LEK
MARS; PEDRO RIBERIO; JOHN L.	)	(Class Action; Injunctions)
LEVAN; FLOYD SANTOS; FLOYD	)	
SYLVESTER; LEO TOILOLO;	)	ORDER Granting <i>Ex-Parte</i> Motion to
JOSE BACDAD; and GEORGE	)	File Under Seal
RABAGO,	)	
	)	
	)	
Plaintiffs,	)	Magistrate Judge Leslie E. Kobayashi
vs.	)	
	)	
BENJAMIN CAYETANO, et al.,	)	
	)	
Defendants.	)	
	)	
	)	

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Order Granting *Ex-Parte* Motion to File Under Seal

The Court having reviewed the Claims Administrator's *Ex-Parte* Motion to File under Seal, the Memorandum in Support, the Declaration of Elbridge W. Smith and Exhibit "A" thereto;

Wherefore and for good cause appearing, this Court hereby grants the Claims Administrator's *Ex-parte* Motion to File Exhibit under Seal and orders *ex-parte* that such unredacted copy of the Adjudication Report to be designated Exhibit "B" to Tapaoan v. Cayetano Settlement Fund Claims Administrator's Final Report be filed under seal with the Court and a redacted version, deleting the names of the claimants, be attached to the public Final Report filed with this Court.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
LESLIE E. KOBAYASHI  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

GREGORY TAPAOAN; MICHAEL ) CIVIL NO. 01-00815 DAE LEK  
MARS; PEDRO RIBERIO; JOHN L. ) (Class Action; Injunctions)  
LEVAN; FLOYD SANTOS; FLOYD )  
SYLVESTER; LEO TOILOLO; ) CERTIFICATE OF SERVICE  
JOSE BACDAD; and GEORGE )  
RABAGO, )  
 )  
Plaintiffs, )  
vs. )  
 )  
BENJAMIN CAYETANO, et al., )  
 )  
Defendants. )  
 )

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Certificate of Service.wpd


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the attached *ex-parte* Motion documents was duly served upon the following by depositing same in the United States Postal Service, postage prepaid on this 15<sup>th</sup> day of December, 2006 and by email to:

Kendall J. Moser, Deputy Attorney General  
425 Queen Street, Honolulu, Hawaii 96813  
kendall.k.moser@hawaii.gov  
Attorney for Defendants

Susan K. Dorsey, ACLU, P.O. BOX 3410, Honolulu, Hawaii 96801  
Susankd@prodigy.net  
Mark S. Davis, Esq, Davis Levin Livingston Grande  
851 Fort Street, Honolulu, Hawaii 96813  
MDavis@davislevin.com  
Attorneys for Plaintiffs

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ELBRIDGE W. SMITH